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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1106

UNITED MINE WORKERS OF AMERICA,
Petitioner

v.

JOSEPH A. YABLONSKI, et al.
Respondents.

PETITIONER'S REPLY TO OPPOSITION BRIEF

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In their efforts to deprive Petitioner United Mine Workers of America of having counsel of its choice, namely, its house counsel, to represent it, with their attending experiences derived in representing it over a long period of years, Respondents Yablonski, et al. have ignored this Court's rejection of the District of Columbia Circuit's thesis of "potential for conflict of interest" in *UMWA, District 12* v. *Illinois State Bar Assn.*, 389 U.S. 217, 223-24 (1967) [Pet. 11-12]. Similarly, Respondents have not concerned themselves with UMWA's jurisdictional challenges that this Court and other federal appellate courts have rejected the All Writs statute as a substitute for appeals and that the District of Columbia Circuit was without jurisdiction because the district court's order, of which Respondents complain, is interlocutory and not appealable (Pet. 13-18).

Respondents' thin excuse for failure to do so because of their lengthy statement of facts invites this Court's presumption of their inability to challenge Petitioner's jurisdictional arguments.

Furthermore, the inaccuracy of Respondents' assertion in their opposition brief (p. 9, fn. 2) that "the complaint in this case makes specific reference to the charge that Carey attempted to persuade Miss Josephine Roche to forge John L. Lewis' name to a letter attacking Boyle critic, Ralph Nader" is fully demonstrated by the following colloquy found in a deposition of Josephine Roche in the case of *Blankenship, et al., Plaintiffs*, v. *W. A. (Tony) Boyle, et al., Defendant*, Civil Action No. 2186-69 in the United States District Court for the District of Columbia, on November 18, 1970, as follows:

"(p. 202)

"*Mr. Gilliam*: I am marking this document as Roche No. 2 for identification.

• • •

"*Mr. Gilliam*:

"Q. Were you ever asked to sign Mr. John L. Lewis' signature, Miss Roche?

"A. No, sir.

"Q. Did you see his correspondence before he did? Was it submitted to you and then you sent it over to him?

"A. He sent me letters that he received at home.

"Q. Did you also open his mail at the Fund from time to time?

"A. Upon his request."

Further, Respondents' assertion of non-denial (Op. Br. 9, fn. 2) is also inaccurate since such denial appears in the Answer's paragraph 26, filed in the instant case in the district court below.

In addition to Respondents' failure to answer the jurisdictional questions, Respondents likewise ignore Petitioner's argument that a district court's discretion cannot be controlled by a writ of mandamus (Pet. 18-19). Furthermore, Respondents' contention that "there were no findings by the district court" (Op. Br. 26) ignores the district court's statement, following a hearing on the disqualification motion, reading (Pet. 7):

> "Well until you can demonstrate more clearly to me that Mr. Carey's participation in this case is improper or that there is a conflict of interest or that he could in some way adversely affect the conduct of the case, he is simply house counsel and I do not read the Court of Appeals Opinion as saying that because he is house counsel he cannot therefore represent the passive defendant and this is a passive defendant."

CONCLUSION

For the reasons assigned herein and in the certiorari petition, Petitioner prays that the Writ of Certiorari should be granted and that the Writ issue to review (1) the Opinion and Judgment of the District of Columbia Circuit entered November 24, 1971 in Case No. 24,945, and (2) the Order denying UMWA's petition for rehearing *en banc* entered therein on January 3, 1972. Petitioner intends to urge each of the questions presented, even if not specifically argued.

Respectfully submitted,

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